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CONTINENTAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HARTFORD FIRE INSURANCE COMPANY,
a Connecticut corporation; and
HARTFORD ACCIDENT AND INDEMNITY
COMPANY, a Connecticut
corporation,

Plaintiffs,

v.

PACIFIC EMPLOYERS INSURANCE
COMPANY; THE AMERICAN INSURANCE
COMPANY; UNITED STATES LIABILITY
INSURANCE COMPANY; THE
CONTINENTAL INSURANCE COMPANY;
GRANITE STATE INSURANCE COMPANY;
THE HERMAN KISHNER TRUST; IRWIN
KISHNER, as Trustee for the
Herman Kishner Trust; JERRY
ENGEL, as Trustee for the Herman
Kishner Trust; BANK OF AMERICA,
N.A., as Trustee for the Herman
Kishner Trust; MARYLAND SQUARE
SHOPPING CENTER LIMITED
LIABILITY COMPANY; MARYLAND
SQUARE, LLC; MELVIN SHAPIRO; and
SHAPIRO BROS INVESTMENT CORP.,

Defendants.

THE CONTINENTAL INSURANCE
COMPANY,

Counter-Claimant/

CASE NO. 2:13-cv-00055-MMD-PAL

DEFENDANT CONTINENTAL INSURANCE
COMPANY'S ANSWER TO PLAINTIFFS'
COMPLAINT FOR DECLARATORY
JUDGMENT AND REIMBURSEMENT, AND
CONTINENTAL INSURANCE COMPANY'S
COUNTERCLAIM AND CROSS-CLAIMS
FOR DECLARATORY JUDGMENT AND
REIMBURSEMENT

JURY DEMAND

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1 Cross-Complainant,
2 v.
3 HARTFORD FIRE INSURANCE COMPANY;
4 and HARTFORD ACCIDENT AND
INDEMNITY COMPANY,
5 Counter-Defendants,
6 PACIFIC EMPLOYERS INSURANCE
7 COMPANY; THE AMERICAN INSURANCE
8 COMPANY; UNITED STATES LIABILITY
9 INSURANCE COMPANY; GRANITE STATE
10 INSURANCE COMPANY; THE HERMAN
11 KISHNER TRUST; IRWIN KISHNER, as
12 Trustee for the Herman Kushner
13 Trust; JERRY ENGEL, as Trustee
14 for the Herman Kushner Trust;
15 BANK OF AMERICA, N.A., as
16 Trustee for the Herman Kushner
17 Trust; MARYLAND SQUARE SHOPPING
18 CENTER LIMITED LIABILITY
19 COMPANY; MARYLAND SQUARE, LLC;
20 MELVIN SHAPIRO; SHAPIRO BROS
21 INVESTMENT CORP.; ESTATE OF
22 PHILIP SHAPIRO; and AL PHILLIPS
23 THE CLEANER,
24 Cross-Defendants.

18 COMES NOW Continental Insurance Company (hereinafter
19 "Continental"), by and through its undersigned counsel, and for
20 its Answer and Affirmative Defenses to the Complaint for
21 Declaratory Judgment and Reimbursement ("Complaint") of
22 Plaintiffs Hartford Fire Insurance Company and Hartford Accident
23 and Indemnity Company (collectively "Hartford"), states as
24 follows:

RESPONSE TO NATURE OF THE CLAIM

26 1. In response to Paragraph 1 of Hartford's Complaint,
27 Continental states that this paragraph consists of a
28 characterization of the action, to which no response is required.

1 To the extent a response is deemed necessary, Continental lacks
2 knowledge or information sufficient to admit or deny whether
3 Hartford is entitled to the relief it is seeking, and therefore,
4 denies the allegations contained in this paragraph.

5 2. In response to Paragraph 2 of Hartford's Complaint,
6 Continental states that this paragraph consists of a
7 characterization of the action, to which no response is required.
8 To the extent a response is deemed necessary, Continental lacks
9 knowledge or information sufficient to admit or deny whether
10 Hartford is entitled to the relief it is seeking, and therefore,
11 denies the allegations contained in this paragraph.

12 3. In response to Paragraph 3 of Hartford's Complaint,
13 Continental states that this paragraph consists of a
14 characterization of the action, to which no response is required.
15 To the extent a response is deemed necessary, Continental denies
16 that Hartford is entitled to the relief it seeks from
17 Continental. Continental lacks knowledge or information
18 sufficient to admit or deny whether Hartford is entitled to the
19 relief it is seeking from the remaining Defendants, and
20 therefore, denies the allegations contained in this paragraph.

21 4. In response to Paragraph 4 of Hartford's Complaint,
22 Continental states that this paragraph consists of a
23 characterization of the action, to which no response is required.
24 To the extent a response is deemed necessary, Continental denies
25 that Hartford is entitled to the relief it seeks from
26 Continental. Continental lacks knowledge or information
27 sufficient to admit or deny whether Hartford is entitled to the
28 relief it is seeking from the remaining Defendants, and

1 therefore, denies the allegations contained in this paragraph.

2 **RESPONSE TO THE PARTIES**

3 5. In response to Paragraph 5 of Hartford's Complaint,
4 Continental admits upon information and belief that Plaintiff
5 Hartford Fire Insurance Company ("Hartford Fire") is an insurance
6 company organized and existing under the laws of the state of
7 Connecticut with its principal place of business in the state of
8 Connecticut.

9 6. In response to Paragraph 6 of Hartford's Complaint,
10 Continental admits upon information and belief that Plaintiff
11 Hartford Accident and Indemnity Company ("Hartford Accident") is
12 an insurance company organized and existing under the laws of the
13 state of Connecticut with its principal place of business in the
14 state of Connecticut.

15 7. In response to Paragraph 7 of Hartford's Complaint,
16 Continental admits upon information and belief that Defendant
17 Pacific Employers Insurance Company ("PEIC") is an insurance
18 company organized and existing under the laws of the state of
19 Pennsylvania with its principal place of business in the state of
20 Pennsylvania.

21 8. In response to Paragraph 8 of Hartford's Complaint,
22 Continental admits upon information and belief that Defendant
23 American Insurance Company ("American") is an insurance company
24 organized and existing under the laws of the state of Ohio with
25 its principal place of business in the state of California.

26 9. In response to Paragraph 9 of Hartford's Complaint,
27 Continental admits upon information and belief that Defendant
28 United States Liability Insurance Company ("USLIC") is an

1 insurance company organized and existing under the laws of the
2 state of Pennsylvania with its principal place of business in the
3 state of Pennsylvania.

4 10. In response to Paragraph 10 of Hartford's Complaint,
5 Continental admits that it is a corporation organized and
6 existing under the laws of Pennsylvania with its principal place
7 of business located in the State of Illinois.

8 11. In response to Paragraph 11 of Hartford's Complaint,
9 Continental admits upon information and belief that Defendant
10 Granite State Insurance Company ("Granite State") is an insurance
11 company organized and existing under the laws of the state of
12 Pennsylvania with its principal place of business in the state of
13 New York.

14 12. In response to Paragraph 12 of Hartford's Complaint,
15 Continental states that this paragraph contains plaintiff's
16 characterization of the action to which no response by
17 Continental is required.

18 13. In response to Paragraph 13 of Hartford's Complaint,
19 Continental admits upon information and belief that Defendant The
20 Herman Kishner Trust ("Kishner Trust") is a private trust created
21 and administered under the laws of the state of Nevada.

22 14. In response to Paragraph 14 of Hartford's Complaint,
23 Continental admits upon information and belief that Defendant
24 Irwin Kishner is a Trustee of the Kishner Trust and is a citizen
25 of the state of Nevada.

26 15. In response to Paragraph 15 of Hartford's Complaint,
27 Continental admits upon information and belief that Defendant
28 Jerry Engel is a Trustee of the Kishner Trust and is a citizen of

1 the state of Nevada.

2 16. In response to Paragraph 16 of Hartford's Complaint,
3 Continental admits upon information and belief that Defendant
4 Bank of America, N.A. ("Bank of America") is a Trustee of the
5 Kishner Trust and is a national banking association organized and
6 existing under the laws of the United States of America and is
7 located for purposes of 28 U.S.C. Section 1348 in the State of
8 North Carolina.

9 17. In response to Paragraph 17 of Hartford's Complaint,
10 Continental admits upon information and belief that Defendant
11 Maryland Square Shopping Center Limited Liability Company
12 ("MSSC") is a Nevada limited liability company. Continental
13 lacks knowledge or information sufficient to admit or deny the
14 remaining allegations contained in this paragraph, and therefore,
15 denies all remaining allegations.

16 18. In response to Paragraph 18 of Hartford's Complaint,
17 Continental states that the allegations contained in this
18 paragraph are not directed to Continental, and no response by
19 Continental is required.

20 19. In response to Paragraph 19 of Hartford's Complaint,
21 Continental admits upon information and belief that Defendant
22 Maryland Square, LLC ("Maryland Square") is a Nevada limited
23 liability company. Continental lacks knowledge or information
24 sufficient to admit or deny the remaining allegations contained
25 in this paragraph, and therefore, denies all remaining
26 allegations.

27 20. In response to Paragraph 20 of Hartford's Complaint,
28 Continental admits upon information and belief that Defendant

1 Melvin Shapiro is a citizen of the state of Nevada. Continental
2 lacks knowledge or information sufficient to admit or deny the
3 remaining allegations contained in this paragraph, and therefore,
4 denies all remaining allegations.

5 21. In response to Paragraph 21 of Hartford's Complaint,
6 Continental admits upon information and belief that Defendant
7 Shapiro Bros. Investment Corp. ("SBIC") was a corporation formed
8 under the laws of the State of Nevada in or about 1972 that
9 dissolved in or about 1984 and that SBIC conducted business under
10 the fictitious names "Al Phillips The Cleaner" and/or "Al
11 Phillips The Cleaner, Inc." in the state of Nevada. Continental
12 lacks knowledge or information sufficient to admit or deny the
13 remaining allegations contained in this paragraph, and therefore,
14 denies the remaining allegations.

15 22. In response to Paragraph 22 of Hartford's Complaint,
16 Continental states that the allegations contained in this
17 paragraph are not directed to Continental, and no response by
18 Continental is required.

19 **RESPONSE TO JURISDICTION AND VENUE**

20 23. In response to Paragraph 23 of Hartford's Complaint,
21 Continental states that the allegations contained in this
22 paragraph are conclusions of law to which no response by
23 Continental is required. To the extent a response is deemed
24 necessary, Continental lacks knowledge or information sufficient
25 to admit or deny the allegations contained in this paragraph, and
26 therefore, denies the allegations.

27 24. In response to Paragraph 24 of Hartford's Complaint,
28 Continental states that the allegations contained in this

1 paragraph are conclusions of law to which no response by
2 Continental is required. To the extent a response is deemed
3 necessary, Continental lacks knowledge or information sufficient
4 to admit or deny the allegations contained in this paragraph, and
5 therefore, denies the allegations.

6 **RESPONSE TO FACTUAL BACKGROUND**

7 A. The Underlying Actions

8 25. In response to Paragraph 25 of Hartford's Complaint,
9 Continental only admits upon information and belief that SBIC
10 operated a dry-cleaning business in Las Vegas, Nevada on property
11 located at 3661 South Maryland Parkway or 3659 South Maryland
12 Parkway (the "Property") for some period between 1968 and 1984.
13 Continental lacks knowledge or information sufficient to admit or
14 deny the remaining allegations contained in this paragraph, and
15 therefore, denies the remaining allegations.

16 26. In response to Paragraph 26 of Hartford's Complaint,
17 Continental admits upon information and belief the allegations
18 contained in this paragraph.

19 27. In response to Paragraph 27 of Hartford's Complaint,
20 Continental states that Continental lacks knowledge or
21 information sufficient to admit or deny the allegations contained
22 in this paragraph, and therefore, denies the allegations.

23 28. In response to Paragraph 28 of Hartford's Complaint,
24 Continental states that Continental lacks knowledge or
25 information sufficient to admit or deny the allegations contained
26 in this paragraph, and therefore, denies the allegations.

27 29. In response to Paragraph 29 of Hartford's Complaint,
28 Continental admits that on or about December 21, 2007 a class

1 action lawsuit titled *Voggenthaler, et al. v. Maryland Square,*
2 *LLC, et al.*, Case No 07-A-553784 was filed in the Eighth Judicial
3 District Court, Clark County Nevada (the "State Court Action").
4 Continental denies the remaining allegations and refers the Court
5 to the complaint in the State Court Action for a full and
6 complete statement of its terms.

7 30. In response to Paragraph 30 of Hartford's Complaint,
8 Continental admits the allegations contained in this paragraph.

9 31. In response to Paragraph 31 of Hartford's Complaint,
10 Continental admits that on or about November 19, 2008 a lawsuit
11 titled *Voggenthaler, et al. v. Maryland Square, LLC, et al.*, Case
12 No, 2:08-cv-1618-LDG-GWF was filed in the United States District
13 Court, District of Nevada (the "Federal Court Action").
14 Continental denies the remaining allegations and refers the Court
15 to the complaint in the Federal Court Action for a full and
16 complete statement of its terms.

17 32. In response to Paragraph 32 of Hartford's Complaint,
18 Continental admits that on or about May 9, 2009 the State of
19 Nevada, Department of Conservation and Natural Resources,
20 Division of Environmental Protection, Bureau of Corrective
21 Actions ("NDEP") filed a lawsuit titled *State of Nevada,*
22 *Department of Conservation and Natural Resources, Division of*
23 *Environmental Protection, Bureau of Corrective Actions v.*
24 *Maryland Square Shopping Center, LLC, et al.*, Case No, 3:09-cv-
25 00231-BES-VPC, in the United States District Court, District of
26 Nevada (the "NDEP Action") and that the Federal Court Action and
27 the NDEP Action were consolidated on July 22, 2010. Continental
28 denies the remaining allegations and refers the court to the

1 complaint in the NDEP Action for a full and complete statement of
2 its terms.

3 33. In response to Paragraph 33 of Hartford's Complaint,
4 Continental states that the allegations contained in this
5 paragraph are not directed to Continental, and no response by
6 Continental is required.

7 B. The Hartford Primary Policies

8 34. In response to Paragraph 34 of Hartford's Complaint,
9 Continental admits upon information and belief the allegations
10 contained in this paragraph.

11 35. In response to Paragraph 35 of Hartford's Complaint,
12 Continental admits upon information and belief the allegations
13 contained in this paragraph.

14 36. In response to Paragraph 36 of Hartford's Complaint,
15 Continental states that the allegations contained in this
16 paragraph are not directed to Continental, and no response by
17 Continental is required.

18 37. In response to Paragraph 37 of Hartford's Complaint,
19 Continental states that Continental lacks knowledge or
20 information sufficient to admit or deny the allegations contained
21 in this paragraph, and therefore, denies the allegations.

22 38. In response to Paragraph 38 of Hartford's Complaint,
23 Continental states that the Hartford Primary Policies speak for
24 themselves and refers the Court to the Hartford Primary Policies
25 for a full and complete statement of their terms.

26 39. In response to Paragraph 39 of Hartford's Complaint,
27 Continental states that the Hartford Primary Policies speak for
28 themselves and refers the Court to the Hartford Primary Policies

1 for a full and complete statement of their terms.

2 40. In response to Paragraph 40 of Hartford's Complaint,
3 Continental states that the Hartford Primary Policies speak for
4 themselves and refers the Court to the Hartford Primary Policies
5 for a full and complete statement of their terms.

6 41. In response to Paragraph 41 of Hartford's Complaint,
7 Continental states that the Hartford Primary Policies speak for
8 themselves and refers the Court to the Hartford Primary Policies
9 for a full and complete statement of their terms.

10 42. In response to Paragraph 42 of Hartford's Complaint,
11 Continental states that the Hartford Primary Policies speak for
12 themselves and refers the Court to the Hartford Primary Policies
13 for a full and complete statement of their terms.

14 C. The Hartford Umbrella Policies

15 43. In response to Paragraph 43 of Hartford's Complaint,
16 Continental admits upon information and belief the allegations
17 contained in this paragraph.

18 44. In response to Paragraph 44 of Hartford's Complaint,
19 Continental states that the allegations contained in this
20 paragraph are not directed to Continental, and no response by
21 Continental is required.

22 45. In response to Paragraph 45 of Hartford's Complaint,
23 Continental states that Continental lacks knowledge or
24 information sufficient to admit or deny the allegations contained
25 in this paragraph, and therefore, denies the allegations.

26 46. In response to Paragraph 46 of Hartford's Complaint,
27 Continental states that the Hartford Umbrella Policies speak for
28 themselves and refers the Court to the Hartford Umbrella Policies

1 for a full and complete statement of their terms.

2 47. In response to Paragraph 47 of Hartford's Complaint,
3 Continental states that the Hartford Umbrella Policies speak for
4 themselves and refers the Court to the Hartford Umbrella Policies
5 for a full and complete statement of their terms.

6 48. In response to Paragraph 48 of Hartford's Complaint,
7 Continental states that the Hartford Umbrella Policies speak for
8 themselves and refers the Court to the Hartford Umbrella Policies
9 for a full and complete statement of their terms.

10 49. In response to Paragraph 49 of Hartford's Complaint,
11 Continental states that the Hartford Umbrella Policies speak for
12 themselves and refers the Court to the Hartford Umbrella Policies
13 for a full and complete statement of their terms.

14 50. In response to Paragraph 50 of Hartford's Complaint,
15 Continental states that the Hartford Umbrella Policies speak for
16 themselves and refers the Court to the Hartford Umbrella Policies
17 for a full and complete statement of their terms.

18 D. The Other Insurers' Policies

19 51. In response to Paragraph 51 of Hartford's Complaint,
20 Continental admits upon information and belief that PEIC issued
21 primary insurance policies to "Shapiro Brothers Investment Corp.
22 dba Al Phillips The Cleaner" bearing the policy number alleged in
23 this paragraph for the policy periods alleged in this paragraph.
24 Continental further states that it lacks knowledge or information
25 sufficient to admit or deny the remaining allegations contained
26 in this paragraph, and therefore, denies the allegations.

27 52. In response to Paragraph 52 of Hartford's Complaint,
28 Continental admits upon information and belief that American

1 issued primary insurance policies to "Al Philips The Cleaner,
2 Inc." bearing the policy numbers alleged in this paragraph for
3 the policy periods alleged in this paragraph. Continental
4 further states that it lacks knowledge or information sufficient
5 to admit or deny the remaining allegations contained in this
6 paragraph, and therefore, denies the allegations.

7 53. In response to Paragraph 53 of Hartford's Complaint,
8 Continental admits upon information and belief that USLIC issued
9 a primary insurance policy to "Valley Bank of Nevada, Irwin
10 Kishner and Jerry Engel, as Co-Trustees of The Herman Kishner
11 Trust and as Co-Executors of the Estate of Herman Kishner,
12 Deceased" bearing the policy number alleged in this paragraph for
13 the policy period alleged in this paragraph. Continental further
14 states that it lacks knowledge or information sufficient to admit
15 or deny the remaining allegations contained in this paragraph,
16 and therefore, denies the allegations.

17 54. In response to Paragraph 54 of Hartford's Complaint,
18 Continental only admits that it issued a primary insurance policy
19 to "Shapiro Brothers Investments DBA: Al Phillips The Cleaner"
20 bearing policy number CBP 1065585 for the policy period August 1,
21 1984 to August 1, 1985 and that it is possession of a copy of the
22 policy. Continental denies the remaining allegations.

23 55. In response to Paragraph 55 of Hartford's Complaint,
24 Continental admits upon information and belief that Granite State
25 issued primary insurance policies to "Valley Bank of Nevada,
26 Irwin Kishner and Jerry Engel, as Co-Trustees of The Herman
27 Kishner Trust and as Executors of the Estate of Herman Kishner,
28 Deceased" bearing the policy numbers alleged in this paragraph

1 for the policy periods alleged in this paragraph. Continental
2 further states that it lacks knowledge or information sufficient
3 to admit or deny the remaining allegations contained in this
4 paragraph, and therefore, denies the allegations.

5 56. In response to Paragraph 56 of Hartford's Complaint,
6 Continental admits upon information and belief that Granite State
7 issued a primary insurance policy to "Al Phillips the Cleaner,
8 Inc." bearing the policy number alleged in this paragraph.
9 Continental further states that it lacks knowledge or information
10 sufficient to admit or deny the remaining allegations contained
11 in this paragraph, and therefore, denies the allegations.

12 **COUNT I**

13 **Declaratory Judgment Against The Shapiro Defendants, The**
14 **Trust Defendants and Maryland Square**

15 57. In response to Paragraph 57 of Hartford's Complaint,
16 Continental states that Continental's responses to paragraphs 1
17 through 56 are incorporated herein.

18 58. In response to Paragraph 58 of Hartford's Complaint,
19 Continental states that the pleadings in the Underlying Actions
20 speak for themselves and refers the Court to the pleadings for a
21 full statement of their terms.

22 59. In response to Paragraph 59 of Hartford's Complaint,
23 Continental states that the allegations contained in this
24 paragraph are conclusions of law to which no response by
25 Continental is required. To the extent a response is deemed
26 necessary, Continental lacks knowledge or information sufficient
27 to admit or deny whether Hartford has any obligation to provide
28 coverage for the Underlying Actions, and therefore, denies the

1 allegations.

2 60. In response to Paragraph 60 of Hartford's Complaint,
3 Continental states that the allegations contained in this
4 paragraph are conclusions of law to which no response by
5 Continental is required. To the extent a response is deemed
6 necessary, Continental lacks knowledge or information sufficient
7 to admit or deny whether Hartford has any obligation to provide
8 coverage for the Underlying Actions, and therefore, denies the
9 allegations.

10 61. In response to Paragraph 61 of Hartford's Complaint,
11 Continental states that the allegations contained in this
12 paragraph are conclusions of law to which no response by
13 Continental is required. To the extent a response is deemed
14 necessary, Continental lacks knowledge or information sufficient
15 to admit or deny whether Hartford has any obligation to provide
16 coverage for the Underlying Actions, and therefore, denies the
17 allegations.

18 62. In response to Paragraph 62 of Hartford's Complaint,
19 Continental states that the allegations contained in this
20 paragraph are conclusions of law to which no response by
21 Continental is required. To the extent a response is deemed
22 necessary, Continental lacks knowledge or information sufficient
23 to admit or deny whether Hartford has any obligation to provide
24 coverage for the Underlying Actions, and therefore, denies the
25 allegations.

26 63. In response to Paragraph 63 of Hartford's Complaint,
27 Continental states that the allegations contained in this
28 paragraph are conclusions of law to which no response by

1 Continental is required. To the extent a response is deemed
2 necessary, Continental lacks knowledge or information sufficient
3 to admit or deny whether Hartford has any obligation to provide
4 coverage for the Underlying Actions, and therefore, denies the
5 allegations.

6 64. In response to Paragraph 64 of Hartford's Complaint,
7 Continental states that the allegations contained in this
8 paragraph are conclusions of law to which no response by
9 Continental is required. To the extent a response is deemed
10 necessary, Continental lacks knowledge or information sufficient
11 to admit or deny whether Hartford has any obligation to provide
12 coverage for the Underlying Actions, and therefore, denies the
13 allegations.

14 65. In response to Paragraph 65 of Hartford's Complaint,
15 Continental states that the allegations contained in this
16 paragraph are conclusions of law to which no response by
17 Continental is required. To the extent a response is deemed
18 necessary, Continental lacks knowledge or information sufficient
19 to admit or deny whether Hartford has any obligation to provide
20 coverage for the Underlying Actions, and therefore, denies the
21 allegations.

22 66. In response to Paragraph 66 of Hartford's Complaint,
23 Continental states that the allegations contained in this
24 paragraph are conclusions of law to which no response by
25 Continental is required. To the extent a response is deemed
26 necessary, Continental lacks knowledge or information sufficient
27 to admit or deny whether Hartford has any obligation to provide
28 coverage for the Underlying Actions, and therefore, denies the

1 allegations.

2 67. In response to Paragraph 67 of Hartford's Complaint,
3 Continental states that the allegations contained in this
4 paragraph are conclusions of law to which no response by
5 Continental is required. To the extent a response is deemed
6 necessary, Continental lacks knowledge or information sufficient
7 to admit or deny the allegations contained in this paragraph, and
8 therefore, denies the allegations.

9 In response to the unnumbered WHEREFORE paragraph,
10 Continental states that Continental is not a defendant on Count
11 I, and no response by Continental is required. To the extent a
12 response is deemed necessary, Continental denies that any
13 judgment may be entered against Continental on Count I.
14 Continental further states it lacks knowledge or information
15 sufficient to admit or deny the allegations as to whether
16 Hartford is entitled to the relief it seeks against other
17 Defendants, and therefore, denies the allegations. Continental
18 denies any other allegations contained in this unnumbered
19 paragraph.

20 COUNT II

21 Declaratory Judgment Against Maryland Square

22 68. In response to Paragraph 68 of Hartford's Complaint,
23 Continental states that Continental's responses to paragraphs 1
24 through 67 are incorporated herein.

25 69. In response to Paragraph 69 of Hartford's Complaint,
26 Continental states that the Hartford Primary Policies and
27 Hartford Umbrella Policies speak for themselves and refers the
28 Court to the Hartford Primary Policies and the Hartford Umbrella

1 Policies for a full and complete statement of their terms.

2 70. In response to Paragraph 70 of Hartford's Complaint,
3 Continental states that the Hartford Umbrella Policies speak for
4 themselves and refers the Court to the Hartford Umbrella Policies
5 for a full and complete statement of their terms.

6 71. In response to Paragraph 71 of Hartford's Complaint,
7 Continental states that Continental lacks knowledge or
8 information sufficient to admit or deny the allegations contained
9 in this paragraph, and therefore, denies the allegations.

10 72. In response to Paragraph 72 of Hartford's Complaint,
11 Continental states that Continental lacks knowledge or
12 information sufficient to admit or deny the allegations contained
13 in this paragraph, and therefore, denies the allegations.

14 73. In response to Paragraph 73 of Hartford's Complaint,
15 Continental states that the Hartford Primary Policies and
16 Hartford Umbrella Policies speak for themselves and refers the
17 Court to the Hartford Primary Policies and the Hartford Umbrella
18 Policies for a full and complete statement of their terms.

19 74. In response to Paragraph 74 of Hartford's Complaint,
20 Continental states that the Hartford Primary Policies and
21 Hartford Umbrella Policies speak for themselves and refers the
22 Court to the Hartford Primary Policies and the Hartford Umbrella
23 Policies for a full and complete statement of their terms.
24 Continental lacks knowledge or information sufficient to admit or
25 deny the remaining allegations contained in this paragraph, and
26 therefore, denies the allegations.

27 75. In response to Paragraph 75 of Hartford's Complaint,
28 Continental states that the allegations contained in this

1 paragraph are conclusions of law to which no response by
2 Continental is required. To the extent a response is deemed
3 necessary, Continental lacks knowledge or information sufficient
4 to admit or deny the allegations contained in this paragraph, and
5 therefore, denies the allegations.

6 In response to the unnumbered WHEREFORE paragraph,
7 Continental states that Continental is not a defendant on Count
8 II, and no response by Continental is required. To the extent a
9 response is deemed necessary, Continental denies that any
10 judgment may be entered against Continental on Count II.
11 Continental further states it lacks knowledge or information
12 sufficient to admit or deny the allegations as to whether
13 Hartford is entitled to the relief it seeks against other
14 Defendants, and therefore, denies the allegations. Continental
15 denies any other allegations contained in this unnumbered
16 paragraph.

17 COUNT III

18 Claim for Reimbursement Against the Shapiro Defendants

19 76. In response to Paragraph 76 of Hartford's Complaint,
20 Continental states that Continental's responses to paragraphs 1
21 through 75 are incorporated herein.

22 77. In response to Paragraph 77 of Hartford's Complaint,
23 Continental states that Continental lacks knowledge or
24 information sufficient to admit or deny the allegations contained
25 in this paragraph, and therefore, denies the allegations.

26 78. In response to Paragraph 78 of Hartford's Complaint,
27 Continental states that Continental lacks knowledge or
28 information sufficient to admit or deny the allegations contained

1 in this paragraph, and therefore, denies the allegations.

2 79. In response to Paragraph 79 of Hartford's Complaint,
3 Continental admits that Hartford seeks equitable reimbursement
4 from the Shapiro Defendants for all monies paid by Hartford
5 toward the defense of the Underlying Actions. Continental
6 further states that it lacks knowledge or information sufficient
7 to admit or deny the allegations as to whether Hartford is
8 entitled to the relief it seeks, and therefore, denies the
9 allegations.

10 In response to the unnumbered WHEREFORE paragraph,
11 Continental states that Continental is not a defendant on Count
12 III, and no response by Continental is required. To the extent a
13 response is deemed necessary, Continental denies that any
14 judgment may be entered against Continental on Count III.
15 Continental further states it lacks knowledge or information
16 sufficient to admit or deny the allegations as to whether
17 Hartford is entitled to the relief it seeks against other
18 Defendants, and therefore, denies the allegations. Continental
19 denies any other allegations contained in this unnumbered
20 paragraph.

21 COUNT IV

22 Claim for Reimbursement Against the Trust Defendants

23 80. In response to Paragraph 80 of Hartford's Complaint,
24 Continental states that Continental's responses to paragraphs 1
25 through 79 are incorporated herein.

26 81. In response to Paragraph 81 of Hartford's Complaint,
27 Continental states that Continental lacks knowledge or
28 information sufficient to admit or deny the allegations contained

1 in this paragraph, and therefore, denies the allegations.

2 82. In response to Paragraph 82 of Hartford's Complaint,
3 Continental states that Continental lacks knowledge or
4 information sufficient to admit or deny the allegations contained
5 in this paragraph, and therefore, denies the allegations.

6 83. In response to Paragraph 83 of Hartford's Complaint,
7 Continental admits that Hartford seeks equitable reimbursement
8 from the Trust Defendants for all monies paid by Hartford toward
9 the defense of the Underlying Actions and all indemnification
10 paid by the Trust Defendants to Maryland Square. Continental
11 further states that it lacks knowledge or information sufficient
12 to admit or deny the allegations as to whether Hartford is
13 entitled to the relief it seeks, and therefore, denies the
14 allegations.

15 In response to the unnumbered WHEREFORE paragraph,
16 Continental states that Continental is not a defendant on Count
17 IV, and no response by Continental is required. To the extent a
18 response is deemed necessary, Continental denies that any
19 judgment may be entered against Continental on Count IV.
20 Continental further states it lacks knowledge or information
21 sufficient to admit or deny the allegations as to whether
22 Hartford is entitled to the relief it seeks against other
23 Defendants, and therefore, denies the allegations. Continental
24 denies any other allegations contained in this unnumbered
25 paragraph.

26 **COUNT VI**

27 **Claim for Reimbursement Against Other Insurers**

28 84. In response to Paragraph 84 of Hartford's Complaint,

1 Continental states that Continental's responses to paragraphs 1
2 through 83 are incorporated herein.

3 85. In response to Paragraph 85 of Hartford's Complaint,
4 Continental states that Continental lacks knowledge or
5 information sufficient to admit or deny the allegations contained
6 in this paragraph, and therefore, denies the allegations.

7 86. In response to Paragraph 86 of Hartford's Complaint,
8 Continental denies that Hartford is entitled to the relief it
9 seeks in this paragraph from Continental. Continental further
10 states that it lacks knowledge or information sufficient to admit
11 or deny the allegations as to whether Hartford is entitled to the
12 relief it seeks in this paragraph from other insurer Defendants,
13 and therefore, denies the allegations. Continental denies any
14 other allegations contained in this paragraph.

15 In response to the unnumbered WHEREFORE paragraph,
16 Continental denies that Hartford is entitled to the relief it
17 seeks, or any other relief whatsoever, from Continental on the
18 Count VI. Continental further states that it lacks knowledge or
19 information sufficient to admit or deny the allegations as to
20 whether Hartford is entitled to the relief it seeks from other
21 insurer Defendants, and therefore, denies the allegations.
22 Continental denies any other allegations contained in this
23 paragraph.

24 **COUNT VII**

25 **Alternative Claim For Declaratory Relief Against the Other**
26 **Insurers, Trust Defendants and Shapiro Defendants**

27 87. In response to Paragraph 87 of Hartford's Complaint,
28 Continental states that Continental's responses to paragraphs 1

1 through 86 are incorporated herein.

2 88. In response to Paragraph 88 of Hartford's Complaint,
3 Continental denies that Hartford is entitled to the relief it
4 seeks in this paragraph from Continental. Continental further
5 states that it lacks knowledge or information sufficient to admit
6 or deny the allegations as to whether Hartford is entitled to the
7 relief it seeks in this paragraph from other insurer Defendants,
8 and therefore, denies the allegations. Continental denies any
9 other allegations contained in this paragraph.

10 89. In response to Paragraph 89 of Hartford's Complaint,
11 Continental states that to the extent the allegations in this
12 paragraph are directed to Continental, Continental denies the
13 allegations. To the extent that the allegations are directed to
14 other insurer Defendants, Continental lacks knowledge or
15 information sufficient to admit or deny the allegations, and
16 therefore, denies the allegations. Continental denies any other
17 allegations contained in this paragraph.

18 In response to the unnumbered WHEREFORE paragraph,
19 Continental denies that Hartford is entitled to the relief it
20 seeks, or any other relief whatsoever, from Continental on Count
21 VII. Continental further states that it lacks knowledge or
22 information sufficient to admit or deny the allegations as to
23 whether Hartford is entitled to the relief it seeks against other
24 insurer Defendants, and therefore, denies the allegations.
25 Continental denies any other allegations contained in this
26 unnumbered paragraph.

27 Continental denies any allegation not otherwise hereinbefore
28 answered.

AFFIRMATIVE DEFENSES

The Affirmative Defenses set forth herein are based on information presently known to Continental. Continental's investigation continues, and Continental reserves the right to assert additional affirmative defenses in the future. Continental sets forth the following matters in order to apprise Plaintiffs of certain potentially applicable defenses. By listing any matter as a defense, Continental does not assume the burden of proving any matter upon which Plaintiffs bear the burden of proof under applicable law.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim upon which relief may be granted against Continental.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent they fail to allege a ripe and judicable controversy with Continental.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent their claims against Continental were not filed within the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that any relief they seek is unreasonable or unnecessary.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that they seek to recover defense or indemnity payments they were not legally obligated to pay.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims may be barred, in whole or in part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims may be barred, in whole or in part, by the doctrines of estoppel, waiver, and unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent they failed to take reasonable measures to mitigate, minimize, or avoid damages.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims may be barred, in whole or in part, because Continental is entitled to enforce the "other insurance" clauses of the Continental Policy.

TENTH AFFIRMATIVE DEFENSE

Plaintiff' claims are barred to the extent that coverage for the Underlying Actions was released under the Continental Policy under any prior settlement agreements.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that coverage for the Underlying Actions is barred, in whole or in part, by the terms, conditions, limitations and exclusions of the Continental Policy.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent that Continental has no defense or indemnity obligations for the Underlying Actions under Continental Policy.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that the limits of the Continental Policy have been exhausted or impaired by the payment of prior claims.

FOURTEENTH AFFIRMATIVE DEFENSE

To the extent that Continental is determined to have any obligation for the Underlying Actions, any such obligation may be limited to the policy period August 1, 1984 to August 31, 1984 under the Continental Policy.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that some or all of the Shapiro Defendants, Trust Defendants and/or Maryland Square do not qualify as insured under the Continental Policy.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that injury or damage arose out of hazards, conditions, risks, losses or losses in progress that were known and/or should have been known by the insured prior to the effective date of the Continental Policy.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that one or more of the conditions of the Continental Policy was not been complied with and/or has been breached, including but not limited to any notice conditions, assistance and/or cooperation conditions, and/or prohibition against voluntary payment conditions contained in the policies.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that any condition set forth in any loss payable clause in the Continental Policy is not satisfied.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that they involve fines, penalties, or punitive or exemplary damages. In addition to being barred by the terms of the Continental Policy, coverage for such punitive damages or fines may be against applicable law or public policy.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent loss arises out of the willful violation of a penal statute or ordinance committed by, or with the consent of, the insured.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that the claims do not allege "bodily injury," "personal injury" or "property damage" within the meaning of the Continental Policy.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that the claims do not allege damages because of "bodily injury," "personal injury" or "property damage" within the meaning of the Continental Policy.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that the claims do not allege an "accident" or "occurrence" within the meaning of the Continental Policy.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that any alleged bodily injury, personal injury or property damage did not take place during the policy period of the Continental Policy.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that any bodily injury, personal injury or property damage was expected or intended from the standpoint of the insured.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions based on the Continental Policy's pollution exclusion.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions based on the Continental Policy's exclusions for property damage.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions based on the Continental Policy's exclusion for contractual liability.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that the claims allege recovery for pure economic loss and not damages or losses because of bodily injury, personal injury or property damage.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, for the Underlying Actions to the extent that injury or damage arises from, is brought about by, or is contributed to by, the dishonest, fraudulent, criminal or malicious act or omission of an insured, or any person at any time employed by an insured.

THIRTY-FIRST AFFIRMATIVE DEFENSE

To the extent Continental pays any monies under the Continental Policy, Continental reserves its right to seek reimbursement of same.

THIRTY-SECOND AFFIRMATIVE DEFENSE

To the extent Continental is determined to have any obligation for the Underlying Actions, any such obligation is subject to the Continental Policy's limits of liability and any applicable underlying insurance, retention or deductibles, and retrospective premiums.

THIRTY-THIRD AFFIRMATIVE DEFENSE

To the extent that Continental is determined to owe any coverage for the Underlying Actions under the Continental Policy, Continental is entitled to allocate any amounts owed for defense or indemnity across all insurance policies and self-insured or uninsured periods implicated by any claim.

THIRTY-FORTH AFFIRMATIVE DEFENSE

Continental relies on and asserts all affirmative defenses
pled by any other insurer Defendant in this action, to the extent
applicable the Continental Policy.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Continental reserves the right to assert any other
affirmative defense that may become available from facts that are
presently unknown to Continental.

WHEREFORE, having fully answered, Continental requests that
this Court enter judgment in its favor and against Plaintiffs,
enter a declaration that Continental has no defense or indemnity
obligations for the Underlying Actions under the Continental
Policy, or alternatively declaring the extent of the parties'
rights and obligations under the Continental Policy, award
Continental its attorneys' fees and costs incurred in this
action, and award Continental such other and further relief as
may be deemed just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil
Procedure, Continental hereby respectfully requests a trial by
jury on all issues and claims so triable.

**COUNTERCLAIM AND CROSS-CLAIMS FOR DECLARATORY JUDGMENT AND
REIMBURSEMENT**

COMES NOW The Continental Insurance Company ("Continental"),
by and through its undersigned counsel, and for its Counterclaim
and Cross-Claims for Declaratory Judgment and Reimbursement
states as follows:

1. Continental seeks a declaration that it does not have

1 any obligation to provide a defense or indemnity to certain
2 Crossclaim Defendants for the Underlying Actions under the
3 Continental Policies.

4 2. In addition, Continental seeks reimbursement from
5 certain Crossclaim Defendants for defense costs paid for the
6 Underlying Actions under the Continental Primary Policy.

7 3. Continental also seeks a declaration that it is
8 entitled to defense and indemnity from certain Crossclaim
9 Defendants for claims for coverage and reimbursement made against
10 Continental under the Continental Policies for the Underlying
11 Actions.

12 4. Continental further seeks a declaration, to the extent
13 necessary, as to the rights, duties and obligations of
14 Continental and certain Crossclaim Defendants and Counterclaim
15 Defendants under the Continental Policies for the Underlying
16 Actions.

17 5. Continental also seeks a declaration, to the extent
18 necessary, as to the allocation of apportionment of defense and
19 indemnity expenses for the Underlying Actions against all
20 Crossclaim Defendants and Counterclaim Defendants.

21 **JURISDICTION AND VENUE**

22 6. Continental asserts its claims pursuant to Rules 13(a)
23 and 13(g) of the Federal Rules of Civil Procedure.

24 7. This Court may exercise subject matter jurisdiction
25 over Continental's claims pursuant to 28 U.S.C. § 1367.

26 8. Venue for Continental's claims is proper in the
27 District of Nevada because Plaintiffs/Counterclaim Defendants
28 initiated the action giving rise to Continental's claims in this

judicial district.

PARTIES

9. Upon information and belief, Counterclaim Defendant Hartford Fire Insurance Company ("Hartford Fire") is an insurance company organized and existing under the laws of the State of Connecticut, with its principal place of business in Connecticut.

10. Upon information and belief, Counterclaim Defendant Hartford Accident and Indemnity Company ("Hartford Accident") is an insurance company organized and existing under the laws of the State of Connecticut, with its principal place of business in Connecticut.

11. Upon information and belief, Crossclaim Defendant Pacific Employers Insurance Company ("PEIC") is an insurance company organized and existing under the laws of the State of Pennsylvania, with its principal place of business located in the State of Pennsylvania.

12. Upon information and belief, Crossclaim Defendant The American Insurance Company ("American") is a corporation organized under the laws of the State of Ohio with its principal place of business located in the State of California.

13. Upon information and belief, Crossclaim Defendant United States Liability Insurance Company ("USLIC") is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business located in the State of Pennsylvania.

14. Upon information and belief, Crossclaim Defendant Granite State Insurance Company ("Granite State") is a corporation organized under the laws of the State of

1 Pennsylvania, with its principal place of business located in the
2 State of New York.

3 15. Upon information and belief, Crossclaim Defendant
4 Shapiro Bros. Investment Corp. ("SBIC") is a corporation which
5 was formed under the laws of the State of Nevada in or about 1972
6 and was dissolved on or about November 14, 1984. Upon further
7 information and belief, Cross Defendant SBIC conducted business
8 under the fictitious names "Al Phillips The Cleaner" and/or "Al
9 Phillips The Cleaner, Inc." in the State of Nevada at certain
10 times relevant to this action.

11 16. Upon information and belief, Crossclaim Defendant Al
12 Phillips The Cleaner, Inc. (Corporate No. 11-1971) ("Al
13 Phillips") was incorporated in Nevada in or about 1971 and was
14 dissolved in or about 1978.

15 17. Upon information and belief, Crossclaim Defendant
16 Melvin Shapiro, is an individual citizen of the State of Nevada
17 and, at certain times relevant to this action, was an officer,
18 director and/or shareholder of Crossclaim Defendants SBIC and Al
19 Phillips.

20 18. Upon information and belief, Crossclaim Defendant the
21 Estate of Philip Shapiro ("Philip Shapiro") is liable for the
22 obligations of Philip Shapiro, who was a citizen of the State of
23 Nevada and, at certain times relevant to this action, was an
24 officer, director and/or shareholder of Crossclaim Defendants
25 SBIC and Al Phillips.

26 19. Crossclaim Defendants SBIC, Melvin Shapiro, Al Phillips
27 and Philip Shapiro are collectively referred as the "Shapiro
28 Defendants."

20. Upon information and belief, Crossclaim Defendant Herman Kishner Trust ("HKT") is a private trust created and administered under the laws of the State of Nevada.

21. Upon information and belief, Crossclaim Defendant Irwin Kishner, who is sued here solely in his capacity as a Trustee for HKT, is a citizen of the State of Nevada.

22. Upon information and belief, Crossclaim Defendant Jerry Engel, who is sued here solely in his capacity as a Trustee for HKT, is a citizen of the State of Nevada.

23. Upon information and belief, Crossclaim Defendant Bank of America, N.A. ("Bank of America"), which is sued here solely in its capacity as a Trustee for HKT, is a national banking association organized and existing under the laws of the United States of America, and is located for the purposes of 28 U.S.C. Section 1348 in the State of North Carolina.

24. Upon information and belief, Crossclaim Defendant Maryland Square Shopping Center Limited Liability Company ("MSSC") is a Nevada limited liability company.

25. Upon information and belief, Crossclaim Defendant Maryland Square, LLC ("Maryland Square") is a Nevada limited liability company.

26. Crossclaim Defendants HKT, Irwin Kishner, Jerry Engel, Bank of America and MSSC are collectively referred to as the "Trust Defendants."

THE CONTINENTAL POLICIES

27. Continental issued a primary general liability insurance policy to "Shapiro Brothers Investments DBA: Al Phillips The Cleaner" bearing policy number CBP 1065585 for the

1 policy period August 1, 1984 to August 1, 1985 ("Continental
2 Primary Policy"). Upon information and belief, all Defendants
3 possess a copy of the Continental Primary Policy.

4 28. Continental issued an umbrella general liability
5 insurance policy to "Shapiro Brothers Investments DBA: Al
6 Phillips The Cleaner" bearing policy number LX CBP 1065585 for
7 the policy period August 1, 1984 to August 1, 1985 ("Continental
8 Umbrella Policy"). Upon information and belief, all Defendants
9 possess a copy of the Continental Umbrella Policy.

10 29. The Continental Primary Policy and the Continental
11 Umbrella Policy are collectively referred to as the "Continental
12 Policies."

13 OTHER INSURER POLICIES

14 30. Upon information and belief, Hartford Fire issued a
15 primary general liability policy to "Shapiro Brothers Investments
16 DBA: Al Phillips The Cleaner" bearing Policy No. 53 CBP GV6264
17 for the policy period November 7, 1982 to August 1, 1983.

18 31. Upon information and belief, Hartford Accident issued a
19 primary general liability policy to "Shapiro Brothers Investments
20 DBA: Al Phillips The Cleaner" bearing Policy No. 53 CBP GV6264
21 for the policy period August 1, 1983 to August 1, 1984.

22 32. Upon information and belief, Hartford Accident issued
23 two umbrella general liability policy to "Shapiro Brothers
24 Investments DBA: Al Phillips The Cleaner" bearing Policy No. 53
25 RHU NB6570 for the policy period April 11, 1983 to August 1,
26 1983, and the policy period August 1, 1983 to August 1, 1984.

27 33. Upon information and belief, PEIC issued two primary
28 liability insurance policies to "Shapiro Brothers Investment

1 Corp. dba Al Phillips the Cleaner" bearing policy number DLP DO
2 52 22 24 2 for the policy period July 1, 1981 to July 1, 1982,
3 and the policy period July 1, 1982 to November 7, 1982.

4 34. Upon information and belief, American issued two
5 primary liability insurance policies to "Al Philips The Cleaner,
6 Inc." as follows: (1) policy number MXP-2568097 for the policy
7 period May 30, 1974 to May 30, 1977; and (2) policy number MXP-
8 3055458 for the policy period May 30, 1977 to May 30, 1980.

9 35. Upon information and belief, USLIC issued a primary
10 liability insurance policy to "Valley Bank of Nevada, Irwin
11 Kishner and Jerry Engel, as Co-Trustees of The Herman Kishner
12 Trust and as Co-Executors of the Estate of Herman Kishner,
13 Deceased" bearing policy number SMP1021 for the policy period
14 November 1, 1972 to November 1, 1975.

15 36. Upon information and belief, Granite State issued three
16 primary liability insurance policies to "Valley Bank of Nevada,
17 Irwin Kishner and Jerry Engel, as Co-Trustees of The Herman
18 Kishner Trust and as Executors of the Estate of Herman Kishner,
19 Deceased" as follows: (1) policy number SMP 76-94-42 for the
20 policy period July 15, 1975 to July 15, 1978; (2) policy number
21 POP 67-93-18 for the policy period July 15, 1978 to July 15,
22 1981; and (3) policy number POP 279-55-27 for the policy period
23 July 15, 1981 to July 15, 1984.

24 37. Upon information and belief, Granite State issued a
25 primary liability insurance policy to "Al Phillips the Cleaner,
26 Inc" bearing policy number POP 17-05-36 for the policy period
27 June 1, 1980 to June 1, 1983.
28

BACKGROUND

38. Upon information and belief, one or more of the Shapiro Defendants leased a portion of a shopping center in Las Vegas, Nevada known as The Maryland Square Shopping Center (the "Property") from HKT from April 29, 1968 through August 31, 1984.

39. During some or all of the period from April 29, 1968 through August 31, 1984 the Shapiro Defendants operated a dry cleaning facility on the Property under the name "Al Phillips The Cleaner" and/or "Al Phillips The Cleaner, Inc."

40. Upon information and belief, on or about November 18, 1982, SBIC and the HKT entered into a 10 year lease ("1982 Lease").

41. Upon information and belief, on August 15, 1984, SBIC entered into an asset purchase agreement (the "APA") with Johnson Group, Inc. ("JGI"), whereby SBIC sold substantially all of its assets, including its dry cleaning business, to JGI effective August 31, 1984.

42. Upon information and belief, on August 27, 1984, JGI incorporated a new company in Nevada called Al Phillips The Cleaner ("New APTC"), and assigned all of JGI's rights under the APA to New APTC. New APTC was a wholly owned subsidiary of JGI.

43. Upon information and belief, on August 31, 1984, the 1982 Lease was assigned from SBIC to New APTC.

44. Upon information and belief, on or about November 14, 1982, SBIC dissolved.

45. Upon information and belief, in or about 1999, MSSC was formed by the HKT for the sole purpose of taking title to the Property.

46. In March 2001, New APTC, JGI (then known as DCI USA, Inc.) and National Dry Cleaners Inc. ("NDC") (JGI's parent corporation) sued Continental and several other insurers in Indiana state court ("Indiana Action") with respect to claims for coverage at several environmental sites, including the Property.

47. Continental settled the Indiana Action (the "Settlement Agreement").

48. In July 2008, New APTC, JGI (then known as DCI USA, Inc.) and NDC filed for bankruptcy. Upon information and belief, the assets of New APTC, JGI and NDC were liquidated in the bankruptcy proceeding.

THE UNDERLYING LAWSUITS

49. The Underlying Actions at issue arise out of alleged PCE contamination originating from the former Al Phillips The Cleaner dry cleaning facility located on the Property.

50. On or about December 21, 2007, a class action lawsuit titled *Voggenthaler, et al. v. Maryland Square, LLC, et al.*, Case No 07-A-553784 was filed in the Eighth Judicial District Court, Clark County Nevada, by and on behalf of owners of homes located near the Property (the "State Court Action"). The complaint in the State Court Action alleged that PCE originating from the Property migrated to soil and groundwater at and below the plaintiffs' homes.

51. The State Court Action was dismissed on or about June 27, 2012.

52. On or about November 19, 2008, a lawsuit titled *Voggenthaler, et al. v. Maryland Square, LLC, et al.*, Case No. 2:08-cv-1618-LDG-GWF, was filed in the United States District

1 Court, District of Nevada, on behalf of certain homeowners in a
 2 neighborhood located near the Property (the "Federal Court
 3 Action"). The plaintiffs seek injunctive relief related to PCE
 4 contamination in the soil and groundwater at and below their
 5 properties.

6 53. On or about May 9, 2009, the State of Nevada,
 7 Department of Conservation and Natural Resources, Division of
 8 Environmental Protection, Bureau of Corrective Actions ("NDEP")
 9 filed a lawsuit titled *State of Nevada, Department of*
 10 *Conservation and Natural Resources., Division of Environmental*
 11 *Protection, Bureau of Corrective Actions v. Maryland Square*
 12 *Shopping Center, LLC, et al.*, Case No. 3:09-cv-00231-BES-VPC, in
 13 the United States District Court, District of Nevada (the "NDEP
 14 Action"). NDEP seeks injunctive relief and costs related to PCE
 15 contamination in the soil and groundwater at and near the
 16 Property. On July 22, 2010, the NDEP Action was consolidated
 17 with the Federal Court Action.

18 54. The State Court Action, the Federal Action and the NDEP
 19 Action are collectively referred to as the "Underlying Actions."

20 **THE SHAPIRO DEFENDANTS' CLAIM FOR COVERAGE FOR THE**
 21 **UNDERLYING LAWSUITS**

22 55. On or about November 3, 2010, the Shapiro Defendants
 23 sought coverage from Continental for the Underlying Actions.

24 56. Continental agreed to defend SBIC, Melvin Shapiro and
 25 Philip Shapiro in the Underlying Actions under the Continental
 26 Primary Policy for the period August 1, 1984 to August 31, 1984
 27 subject to a reservation of rights, including the right to seek
 28 reimbursement for defense and indemnity costs paid and the right

1 to seek a declaration that Continental does not owe coverage.

2 57. Continental denied any obligation to provide coverage
3 to Al Phillips for the Underlying Actions under the Continental
4 Policies.

5 **THE KISHNER PARTIES' CLAIM FOR COVERAGE**

6 58. On or about March 24, 2008, the Trust Defendants sought
7 coverage from Continental for the Underlying Actions.

8 59. Continental eventually agreed to defend HKT under the
9 Continental Primary Policy subject to a reservation of rights,
10 including the right to seek reimbursement for defense and
11 indemnity costs paid and the right to seek a declaration that
12 Continental does not owe coverage.

13 60. Continental denied any obligation to provide coverage
14 to MSSC for the Underlying Actions under the Continental
15 Policies.

16 **COUNT I**

17 **DECLARATORY JUDGMENT AGAINST AL PHILLIPS,**
18 **MSSC AND MARYLAND SQUARE**

19 61. Continental incorporates by reference paragraphs 1
20 through 60 above as though fully set forth herein.

21 62. Al Phillips was both incorporated and dissolved prior
22 to August 1, 1984, the date the Continental Policies incepted.

23 63. According to the records of the Nevada Secretary of
24 State, MSSC filed articles of incorporation on June 11, 1999,
25 which is more than 13 years after the Continental Policies
26 expired.

27 64. According to the records of the Nevada Secretary of
28 State, Maryland Square filed articles of incorporation on

1 September 6, 2005, which is more than 20 years after the
2 Continental Policies expired.

3 65. Accordingly, Al Phillips, MSSC and Maryland Square do
4 not qualify as insureds under the Continental Policies, and
5 Continental does not owe a defense or indemnity to Al Phillips,
6 MSSC and Maryland Square under the Continental Policies for the
7 Underlying Actions.

8 WHEREFORE, Continental respectfully requests that this
9 Court:

10 A. Enter a declaratory judgment that Continental does not
11 owe a defense or indemnity to Al Phillips, MSSC and Maryland
12 Square for the Underlying Actions because they do not qualify as
13 insureds under the Continental Policies;

14 B. Award Continental its attorney fees and costs; and

15 C. Grant such other and further relief to Continental as
16 this Court deems just and proper.

17 COUNT II

18 DECLARATORY JUDGMENT UNDER THE SETTLEMENT AGREEMENT AND 19 UNDER THE ASSET PURCHASE AGREEMENT AGAINST THE SHAPIRO DEFENDANTS AND REIMBURSEMENT AGAINST AL PHILLIPS AND SBIC

20 66. Continental incorporates by reference paragraphs 1
21 through 65 above as though fully set forth herein.

22 67. Under the Settlement Agreement, the Shapiro Defendants
23 released all claims for coverage under the Continental Policies.

24 68. Accordingly, Continental does not owe a defense or
25 indemnity to the Shapiro Defendants for the Underlying Actions
26 under the Continental Policies.

27 69. Pursuant to the terms of the APA, SBIC transferred
28 ownership of the Continental Policies and right to seek coverage

1 to JGI.

2 70. Accordingly, Continental does not owe a defense or
3 indemnity to the Shapiro Defendants for the Underlying Actions
4 under the Continental Policies.

5 71. Furthermore, the Shapiro Defendants have failed to
6 demonstrate that Continental owes any current obligation to them
7 under the Settlement Agreement for the Underlying Actions.

8 72. Moreover, Al Phillips and SBIC are obligated under the
9 Settlement Agreement to indemnify Continental, which obligation
10 in this matter includes, but is not limited to, providing a
11 defense and indemnity to Continental for: (a) all claims for
12 coverage made by any entity under the Continental Policies for
13 the Underlying Actions; (b) Hartford's claims against Continental
14 relating to the Underlying Actions; and (c) any other claims
15 brought against Continental by any other entities, including the
16 other Crossclaim Defendant insurers, relating to the Underlying
17 Actions.

18 WHEREFORE, Continental respectfully requests that this
19 Court:

20 A. Enter a declaratory judgment that Continental does not
21 owe a defense or indemnity to the Shapiro Defendants under the
22 Continental Policies for the Underlying Actions because of the
23 Settlement Agreement;

24 B. Enter a declaratory judgment that Continental does not
25 owe a defense or indemnity to the Shapiro Defendants under the
26 Continental Policies for the Underlying Actions because of the
27 APA;

28 C. Enter a declaratory judgment that Continental may

1 withdraw the defense it is providing to SBIC, Melvin Shapiro and
2 Philip Shapiro in the Underlying Actions;

3 D. Enter a declaratory judgment that Continental does not
4 owe any current obligation to the Shapiro Defendants under the
5 Settlement Agreement for the Underlying Actions;

6 E. Enter a declaratory judgment that Al Phillips and SBIC
7 must provide a defense and indemnity to Continental for: (a) all
8 claims for coverage made by any entity under the Continental
9 Policies for the Underlying Actions; (b) Hartford's claims
10 against Continental relating to the Underlying Actions; and (c)
11 any other claims brought against Continental by any other
12 entities, including the other Crossclaim Defendant insurers,
13 relating to the Underlying Actions;

14 F. Enter a declaratory judgment that Al Phillips and SBIC
15 must reimburse Continental for all defense and indemnity expenses
16 paid by Continental under the Continental Policies for: (a) all
17 claims for coverage made by any entity under the Continental
18 Policies for the Underlying Actions; (b) Hartford's claims
19 against Continental relating to the Underlying Actions; and (c)
20 any other claims brought against Continental by any other
21 entities, including the other Crossclaim Defendant insurers,
22 relating to the Underlying Actions;

23 G. Enter a judgment in Continental's favor and against Al
24 Phillips and SBIC for the total amount of monies it must
25 reimburse Continental;

26 H. Award Continental its attorney fees and costs; and

27 I. Grant such other and further relief to Continental as
28 this Court deems just and proper.

COUNT III

DECLARATORY JUDGMENT AGAINST THE SHAPIRO DEFENDANTS, THE
TRUST DEFENDANTS AND MARYLAND SQUARE

73. Continental incorporates by reference paragraphs 1 through 72 above as though fully set forth herein.

74. The Continental Primary Policy's Insuring Agreement states in relevant part as follows:

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

A. bodily injury or

B. property damage

To which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, ... but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

75. The Continental Umbrella Policy's Insuring Agreement states in relevant part as follows:

To pay on behalf of the insured the ultimate net loss, in excess of the applicable underlying or retained limit, which the

insured shall become legally obligated to pay
as damages because of
(A) Personal Injury
(B) Property Damage, or
(C) Advertising Injury
to which this policy applies, caused by
an occurrence

76. The plaintiffs in the Federal Court Action and the NDEP Action have brought claims for injunctive and/or equitable relief. Additionally, the Shapiro Defendants and/or Trust Defendants seek to recover certain costs that were incurred to comply with court ordered injunctions. These claims and costs do not constitute damages because of bodily injury or property damage under the Continental Primary Policy and do not constitute damages because of Personal Injury or Property Damage under the Continental Umbrella Policy.

77. Accordingly, Continental does not owe a defense or indemnity to the Shapiro Defendants, the Trust Defendants and Maryland Square for the Federal Court Action and the NDEP Action under the Continental Policies because the claims and costs in these actions do not constitute damages because of bodily injury or property damage under the Continental Primary Policy and do not constitute damages because of Personal Injury or Property Damage under the Continental Umbrella Policy.

78. The Continental Primary Policy contains a pollution exclusion that states insurance does not apply "(f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids

1 alkalis, toxic chemicals, liquids or gases, waste materials or
2 other irritants, contaminants or pollutants into or upon land,
3 the atmosphere or any water course or body of water; but this
4 exclusion does not apply if such discharge, dispersal, release or
5 escape is sudden and accidental."

6 79. The Continental Umbrella Policy contains a pollution
7 exclusion that states insurance does not apply "(g) to liability
8 arising out of the discharge, dispersal, release or escape of
9 smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals,
10 liquids or gases, waste materials or other irritants,
11 contaminants or pollutants into or upon land, the atmosphere or
12 any water course or body of water; but this exclusion does not
13 apply if such discharge, dispersal, release or escape is sudden
14 and accidental."

15 80. The Underlying Actions arise from hazardous substance
16 contamination at and allegedly emanating from the former Al
17 Phillips The Cleaner dry cleaning facility on the Property.

18 81. Accordingly, Continental does not owe a defense or
19 indemnity to the Shapiro Defendants, the Trust Defendants and
20 Maryland Square under the Continental Policies because the
21 policies' pollution exclusions apply to exclude coverage for the
22 Underlying Actions.

23 82. The Continental Primary Policy contains an exclusion
24 that states insurance does not apply "(k) to property damage to
25 (1) property owned or occupied by or rented to the insured; (2)
26 property used by the insured, or (3) property in the care,
27 custody or control of the insured or as to which the insured is
28 for any purpose exercising physical control; ..."

1 83. The Continental Umbrella Policy contains an exclusion
2 that states insurance does not apply "(1) property owned by the
3 insured, ... (3) real property rented to, occupied or used by or in
4 the care, custody or control of the insured to the extent the
5 insured is required by contract to provide insurance therefor, or
6 personal property leased by, rented to, used by or in the care,
7 custody or control of the insured."

8 84. The Property was owned at all relevant times by one or
9 more of the Trust Defendants and was leased by one or more of the
10 Shapiro Defendants from April 29, 1968 to August 31, 1984.

11 85. Accordingly, Continental does not owe a defense or
12 indemnity to the Shapiro Defendants, the Trust Defendants and
13 Maryland Square under the Continental Policies because the
14 policies' property damage exclusions (noted in the preceding two
15 paragraphs) apply to exclude coverage for the Underlying Actions.

16 86. The Continental Primary Policy contains a condition
17 titled "Insured's Duties in the Event of Occurrence, Claim or
18 Suit:", which states as follows:

19 (a) In the event of an occurrence, written
20 notice containing particulars sufficient to
21 identify the insured and also reasonably
22 obtainable information with respect to the
23 time, place and circumstances thereof, and
24 the names and addresses of the injured and of
25 available witnesses, shall be given by or for
26 the insured to the company or any of its
27 authorized agents as soon as practicable.

28 (b) If claim is made or suit is brought

1 against the insured, the insured shall
2 immediately forward to the company every
3 demand, notice, summons or other process
4 received by him or his representative.

5 (c) The insured shall cooperate with the
6 company and, upon the company's request,
7 assist in making settlements, in the conduct
8 of suits and in enforcing any right of
9 contribution or indemnity against any person
10 or organization who may be liable to the
11 insured because of injury or damage with
12 respect to which insurance is afforded under
13 this endorsement; and the insured shall
14 attend hearings and trial and assist in
15 securing the giving evidence and obtaining
16 the attendance of witnesses. The insured
17 shall not, except at his own cost,
18 voluntarily make any payment, assume any
19 obligation or incur any expense other than
20 for first aid to others at the time of
21 accident.

22 87. The Shapiro Defendants did not seek coverage from
23 Continental for the Underlying Actions until November 3, 2010,
24 which is more than 34 months after the State Court Action was
25 filed, more than 23 months after the Federal Court Action was
26 filed, and more than 18 months after the NDEP Action was filed.

27 88. The Shapiro Defendants have breached the "Insured's
28 Duties in the Event of Occurrence, Claim or Suit" condition in

1 the Continental Primary Policy, and accordingly, Continental does
2 not owe a defense or indemnity to the Shapiro Defendants under
3 the Continental Primary Policy for the Underlying Actions.

4 89. Furthermore, even if coverage otherwise exists,
5 Continental has no obligation to pay for or reimburse any defense
6 costs incurred by the Shapiro Defendants before November 3, 2010.

7 90. The Trust Defendants and Maryland Square are not listed
8 as named insureds or additional insureds under the Continental
9 Umbrella Policy.

10 91. Furthermore, the 1982 Lease only requires that SBIC
11 maintain public liability insurance with liability limits of not
12 less than \$500,000 per person and \$1,000,000 per occurrence.

13 92. The 1982 Lease does not require that SBIC provide
14 umbrella coverage to any of the Trust Defendants or Maryland
15 Square.

16 93. Accordingly, the Trust Defendants and Maryland Square
17 do not qualify as insureds under the Continental Umbrella Policy,
18 and Continental does not owe a defense or indemnity to them under
19 the Continental Umbrella Policy for the Underlying Actions.

20 WHEREFORE, Continental respectfully requests that this
21 Court:

22 A. Enter a declaratory judgment that Continental does not
23 owe a defense or indemnity to the Shapiro Defendants, the Trust
24 Defendants and Maryland Square under the Continental Policies for
25 some or all of the Underlying Actions for the reasons set forth
26 in this Count;

27 B. Enter a declaratory judgment that Continental may
28 withdraw the defense it is providing to SBIC, Melvin Shapiro,

Philip Shapiro and HKT in the Underlying Actions;

C. Enter a declaratory judgment that even if coverage otherwise exists, Continental has no obligation to pay for or reimburse any defense costs incurred by the Shapiro Defendants before November 3, 2010;

D. Enter a declaratory judgment that Continental does not owe a defense or indemnity to the Trust Defendants and Maryland Square under the Continental Umbrella Policy for the Underlying Actions because they do not qualify as insureds under the policy;

E. Award Continental its attorney fees and costs; and

F. Grant such other and further relief to Continental as this Court deems just and proper.

COUNT IV

DECLARATORY JUDGMENT OF THE RIGHTS AND OBLIGATIONS OF CONTINENTAL, THE SHAPIRO DEFENDANTS, THE TRUST DEFENDANTS AND MARYLAND SQUARE UNDER THE CONTINENTAL POLICIES

94. Continental incorporates by reference paragraphs 1 through 93 above as though fully set forth herein.

95. To the extent necessary, Continental respectfully requests that this Court declare that Continental does not owe a defense or indemnity in whole or in part under the Continental Policies to the Shapiro Defendants, the Trust Defendants and Maryland Square for the Underlying Actions on one or more of the bases set forth below:

a. Coverage for Melvin Shapiro and Philip Shapiro for the Underlying Actions may be barred, in whole or in part, for any claims brought against them for which they do not qualify as an insured under the Continental Policies.

b. Coverage for Melvin Shapiro and Philip Shapiro for the

1 Underlying Actions is barred for any claims for which they face
2 liability in their personal capacity under the Continental
3 Policies.

4 c. To the extent that coverage otherwise exists for one or
5 more of the Trust Defendants, coverage for the Underlying Actions
6 under the Continental Policies may be limited to the policy
7 period August 1, 1984 to August 31, 1984.

8 d. Coverage for the Underlying Actions under the
9 Continental Primary Policy is subject to the policy's limit of \$1
10 million each occurrence for bodily injury and property damage
11 combined, and a \$1 million aggregate limit that applies because
12 the policy was rated on a remuneration basis.

13 e. Coverage for the Underlying Actions is barred under the
14 Continental Umbrella Policy to the extent all applicable
15 underlying insurance and/or retained limits have not been
16 properly satisfied.

17 f. Coverage for the Underlying Actions may be barred, in
18 whole or in part, to the extent injury or damage arose out of
19 hazards, conditions, risks, losses or losses in progress that
20 were known and/or should have been known by the insured prior to
21 the effective date of the Continental Policies.

22 g. Coverage for the Underlying Actions is barred to the
23 extent that any entity seeking coverage is unable to prove that
24 it qualifies as an insured under the Continental Policies.

25 h. Coverage for the Underlying Actions may be barred, in
26 whole or in part, to the extent that one or more of the
27 conditions of the Continental Policies has not been complied with
28 and/or has been breached, including but not limited to any notice

1 conditions, assistance and/or cooperation conditions, and/or
2 prohibition against voluntary payments conditions contained in
3 the policies.

4 i. Coverage for the Underlying Actions may be barred, in
5 whole or in part, to the extent that any condition set forth in
6 any loss payable clause in the Continental Policies is not
7 satisfied.

8 j. Coverage for the Underlying Actions, if any, is subject
9 to the Continental Policies' limits of liability and any
10 applicable underlying insurance, retentions or deductibles.

11 k. The Continental Policies contain "other insurance"
12 clauses that may preclude or reduce any coverage available under
13 the policies.

14 l. Coverage for the Underlying Actions may be barred, in
15 whole or in part, to the extent that they involve fines,
16 penalties, or punitive or exemplary damages. In addition to
17 being barred by the terms of the Continental Policies, coverage
18 for such punitive damages or fines may be against applicable law
19 or public policy.

20 m. Coverage for the Underlying Actions may be barred, in
21 whole or in part, to the extent loss arises out of the willful
22 violation of a penal statute or ordinance committed by, or with
23 the consent of, the insured.

24 n. Coverage for the Underlying Actions may be barred, in
25 whole or in part, to the extent that an insured, by its action
26 and/or inaction, has failed to mitigate, minimize or avoid
27 damages, or has prejudiced the rights of Continental under the
28 Continental Policies.

1 o. To the extent Continental pays any monies under the
2 Continental Policies, such payments may be subject to
3 retrospective premiums under the policies.

4 p. Coverage for the Underlying Actions may be barred in
5 whole or in part, to the extent that the claims do not allege
6 "bodily injury," "personal injury" or "property damage" within
7 the meaning of the Continental Policies.

8 q. Coverage for the Underlying Actions may be barred in
9 whole or in part, to the extent that the claims do not allege an
10 "accident" or "occurrence" within the meaning of the Continental
11 Policies.

12 r. Coverage for the Underlying Actions may be barred in
13 whole or in part, to the extent that any alleged bodily injury,
14 personal injury or property damage did not take place during the
15 policy period of the Continental Policies.

16 s. Coverage for the Underlying Actions may be barred, in
17 whole or in part, to the extent that any bodily injury, personal
18 injury or property damage was expected or intended from the
19 standpoint of the insured.

20 t. Coverage for the Underlying Actions may be barred, in
21 whole or in part, based on any exclusions for contractual
22 liability contained in the Continental Policies.

23 u. Coverage for the Underlying Actions is not afforded to
24 the extent that the claims allege recovery for pure economic loss
25 and not damages or losses because of bodily injury, personal
26 injury or property damage.

27 v. Coverage for the Underlying Actions may be barred in
28 whole or in part, to the extent an insured seeks coverage for

1 costs it was not legally obligated to pay as damages or losses.

2 w. Coverage for Underlying Actions may be barred, in whole
3 or in part, to the extent that injury or damage arises from, is
4 brought about by, or is contributed to by, the dishonest,
5 fraudulent, criminal or malicious act or omission of an insured,
6 or any person at any time employed by an insured.

7 x. To the extent Continental pays any monies under the
8 Continental Policies, Continental reserves its right to seek
9 reimbursement of same, including to the extent that the costs
10 were incurred in settlement or other resolution of uncovered
11 claims.

12 y. To the extent Continental may be determined to owe any
13 coverage for the Underlying Actions under the Continental
14 Policies, Continental is entitled to allocate any amounts owed
15 for defense and indemnity across all insurance policies and self-
16 insured or uninsured periods implicated by any claim.

17 WHEREFORE, Continental respectfully requests that this
18 Court:

19 A. Enter a declaratory judgment that Continental does not
20 owe a defense or indemnity to the Shapiro Defendants, the Trust
21 Defendants or Maryland Square under the Continental Policies for
22 the Underlying Actions for the reasons set forth in this Count;

23 B. Enter a declaratory judgment that Continental may
24 withdraw the defense it is providing to SBIC, Melvin Shapiro,
25 Philip Shapiro and HKT in the Underlying Actions;

26 C. Enter a declaratory judgment setting forth the rights
27 and obligations of Continental, the Shapiro Defendants, the Trust
28 Defendants and Maryland Square under the Continental Policies for

1 the Underlying Actions;

2 D. Award Continental its attorney fees and costs; and

3 E. Grant such other and further relief to Continental as
4 this Court deems just and proper.

5 **COUNT V**

6 **DECLARATORY JUDGMENT THAT CONTINENTAL ONLY OWES 1 MONTH OF**
7 **COVERAGE TO THE SHAPIRO DEFENDANTS**

8 96. Continental incorporates by reference paragraphs 1
9 through 95 above as though fully set forth herein.

10 97. SBIC sold substantially all of its assets, including
11 its dry cleaning business, to JGI effective August 31, 1984.
12 Moreover, SBIC dissolved on or about November 14, 1982.

13 98. The Continental Policies contain an endorsement that
14 changed the named insured from "Shapiro Brothers Investments DBA:
15 Al Phillips The Cleaner" to "Johnson Group, Inc. DBA Al Phillips
16 The Cleaner" effective September 1, 1984. Thus, SBIC does
17 qualify as an insured under the Continental Policies effective
18 September 1, 1984.

19 99. Accordingly, to the extent coverage otherwise exists
20 for the Shapiro Defendants under the Continental Policies for the
21 Underlying Actions, Continental's obligations to provide a
22 defense or indemnity to the Shapiro Defendants is limited to the
23 one month period from August 1, 1984 to August 31, 1984.

24 WHEREFORE, Continental respectfully requests that this
25 Court:

26 A. Enter a declaratory judgment that to the extent
27 coverage otherwise exists for the Shapiro Defendants under the
28 Continental Policies for the Underlying Actions, Continental's

obligations to provide a defense or indemnity to the Shapiro Defendants is limited to the one month period from August 1, 1984 to August 31, 1984;

B. Award Continental its attorney fees and costs; and

C. Grant such other and further relief to Continental as this Court deems just and proper.

COUNT VI

REIMBURSEMENT AGAINST SBIC, MELVIN SHAPIRO, PHILIP SHAPIRO AND HKT

100. Continental incorporates by reference paragraphs 1 through 99 above as though fully set forth herein.

101. Continental agreed to provide a defense to SBIC, Melvin Shapiro and Philip Shapiro in the Underlying Actions subject to a reservation of rights, including the right to seek reimbursement from SBIC, Melvin Shapiro and Philip Shapiro for defense costs paid.

102. Continental agreed to provide a defense to HKT in the Underlying Actions subject to a reservation of rights, including the right to seek reimbursement from HKT for defense costs paid.

103. Continental does not have and had no obligation to provide defense to SBIC, Melvin Shapiro, Philip Shapiro and HKT for some or all of the reasons noted in Counts II, III and IV, and accordingly, they are and were not entitled to entitled to receive the benefit of any defense payments made on their behalf by Continental under the Continental Primary Policy in the Underlying Actions.

104. Accordingly, Continental is entitled to reimbursement from SBIC, Melvin Shapiro, Philip Shapiro and HKT for all defense

1 payments made on their behalf by Continental under the
2 Continental Primary Policy in the Underlying Actions.

3 WHEREFORE, Continental respectfully requests that this
4 Court:

5 A. Enter a declaratory judgment that SBIC, Melvin Shapiro
6 and Philip Shapiro must reimburse Continental for all defense
7 payments made on their behalf by Continental under the
8 Continental Primary Policy in the Underlying Actions;

9 B. Enter a declaratory judgment that HKT must reimburse
10 Continental for all defense payments made on its behalf by
11 Continental under the Continental Primary Policy in the
12 Underlying Actions

13 C. Enter a judgment in Continental's favor and against
14 SBIC, Melvin Shapiro and Philip Shapiro for the total amount of
15 monies they must reimburse Continental;

16 D. Enter a judgment in Continental's favor and against HKT
17 for the total amount of monies it must reimburse Continental;

18 E. Award Continental its attorney fees and costs; and

19 F. Grant such other and further relief to Continental as
20 this Court deems just and proper.

21 COUNT VII

22 CLAIM FOR DECLARATORY JUDGMENT AND REIMBURSEMENT AGAINST ALL 23 CROSS-DEFENDANTS

24 105. Continental incorporates by reference paragraphs 1
25 through 104 above as though fully set forth herein.

26 106. Continental agreed to provide a defense to SBIC, Melvin
27 Shapiro and Philip Shapiro in the Underlying Actions subject to a
28 reservation of rights, including the right to seek reimbursement

1 from SBIC, Melvin Shapiro and Philip Shapiro for defense costs
2 paid, and the right to seek contribution from other insurers.

3 107. Continental agreed to provide a defense to HKT in the
4 Underlying Actions subject to a reservation of rights, including
5 the right to seek reimbursement from HKT for defense costs paid,
6 and the right to seek contribution from other insurers.

7 108. To the extent that it is determined that Continental
8 has a duty to provide a defense and/or indemnity for the
9 Underlying Actions under the Continental Policies, Continental is
10 entitled to an allocation and apportionment of past and future
11 defense and indemnity expenses paid in the Underlying Actions
12 against all Cross Defendants.

13 109. Furthermore, to the extent that it is determined that
14 Continental has a duty to provide a defense and/or indemnity for
15 the Underlying Actions under the Continental Policies,
16 Continental is entitled to a contribution and reimbursement
17 against all Cross Defendants of past defense and indemnity
18 expenses paid by Continental under the Continental Policies in
19 the Underlying Actions in excess of Continental's applicable
20 share of defense and indemnity expenses.

21 WHEREFORE, Continental respectfully requests that this
22 Court:

23 A. Enter a declaratory judgment that Continental is
24 entitled to an allocation and apportionment of past and future
25 defense and indemnity expenses paid in the Underlying Actions
26 against all Cross Defendants;

27 B. Enter an allocation and apportionment of past and
28 future defense and indemnity expenses paid in the Underlying

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1 Actions against all Cross Defendants

2 C. Enter a declaratory judgment that Continental is
3 entitled to a contribution and reimbursement against all Cross
4 Defendants of past defense and indemnity expenses paid by
5 Continental under the Continental Policies in the Underlying
6 Actions in excess of Continental's applicable share of defense
7 and indemnity expenses;

8 D. Enter a judgment in Continental's favor and against
9 some or all of the Cross Defendants for the total amount of
10 monies they must reimburse Continental;

11 G. Award Continental its attorney fees and costs; and

12 H. Grant such other and further relief to Continental as
13 this Court deems just and proper.

14 DATED: March 29, 2013 SELMAN BREITMAN LLP

15
16 By: /s/ Theodore J. Kurtz
17 THEODORE J. KURTZ (SBN 1344)
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25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of March 2013, the foregoing DEFENDANT CONTINENTAL INSURANCE COMPANY'S ANSWER TO PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT AND REIMBURSEMENT, AND CONTINENTAL INSURANCE COMPANY'S COUNTERCLAIM AND CROSS-CLAIMS FOR DECLARATORY JUDGMENT AND REIMBURSEMENT was served on all parties via the United States District Court CM/ECF system.

/s/ Bonnie Kerkhoff Juarez
BONNIE KERKHOFF JUAREZ
An Employee of SELMAN BREITMAN
LLP

Selman Breitman LLP
ATTORNEYS AT LAW